

AARON & PATERNOSTER, LTD.
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:)	Chapter 13 Proceedings
)	Case No: 09-11008-BAM
LAWRENCE MARCUS,)	
)	
Debtor(s).)	DATE: 12/01/2009
)	TIME: 1:30 P.M.

OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW, Debtor, LAWRENCE MARCUS, ("Debtor"), by and through his attorney, the law firm of AARON & PATERNOSTER LTD., and hereby submits this Opposition to Motion for Relief from Automatic Stay.

This Opposition is based on the following Memorandum of Points and Authorities, the attached Exhibits, all papers and pleadings on file herein, and any other argument or evidence permitted by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

1. Debtor filed the instant Chapter 13, Case Number 09-11008-BAM, on January 26, 2009. On the petition date, Debtor owned real property located at or about 5365 S. Eastern Avenue, Las Vegas, Nevada 89119 ("Property"). Debtor valued this property at a fair market value of \$157,762.00.

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II.

LEGAL ARGUMENT

Movant's Motion argued it owns the current interests in the first note and deed of trust and alleges that the Debtor and bankruptcy estate have insufficient equity in the property.

1. 11 U.S.C. § 362(d) - Relief from Automatic Stay

"To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1)."¹ A prima facie case requires Movant show "a factual and legal right" to relief.² "If the movant fails to meet its initial burden to demonstrate cause, relief from the automatic stay should be denied."³ Therefore, Movant must prove it has a "lack of adequate protection" in the Property; or Movant must prove Debtor "does not have an equity" in the Property and the Property "is not necessary to [Debtor's] effective reorganization."⁴

The Debtor agrees there is no equity in the Property. However, Movant failed to prove the Property "is not necessary to [Debtor's] effective reorganization." This route requires Movant prove both elements. Even if Debtor concedes the first element, Movant failed to put forth any evidence showing the Property "is not necessary to [Debtor's] effective reorganization." A basic tenet of bankruptcy is a stable and established residence is highly beneficial to an individual or family's stability, thus, contributive to the well being of society. Because Movant failed to put forth any evidence showing the Property "is not necessary to [Debtor's] effective reorganization," Movant's Motion should be denied.

¹*In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 557 (Bkrtcy.C.D.Cal.,2004) (citing *Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 142 (2nd Cir.1999); *Duvar Apt., Inc. v. Fed. Deposit Ins. Corp. (In re Duvar Apt., Inc.)*, 205 B.R. 196, 200 (9th Cir. BAP 1996); *FSFG Serv. Corp. v. Kim (In re Kim)*, 71 B.R. 1011, 1015 (Bankr.C.D.Cal.1987).

²*Id.* (citing *In re Elmira Litho, Inc.*, 174 B.R. 892, 902 (Bankr.S.D.N.Y.1994); *In re Planned Systems, Inc.*, 78 B.R. 852, 859-60 (Bankr.S.D.Ohio 1987); 3 Collier on Bankruptcy ¶ 362.10, at 362-117 (Alan N. Resnick & Henry J. Sommers eds., 15th ed. rev.2003)).

³*Id.* (citations omitted).

⁴11 U.S.C. § 362(d)(1)-(2).

1 III.

2 CONCLUSION

3 WHEREFORE, based on the foregoing, Debtor respectfully requests this Court deny the
4 Motion for Relief from Automatic Stay, and grant other relief the Court deems just, equitable, or
5 appropriate.

6 Dated this 24th day of November, 2009.

7 AARON & PATERNOSTER LTD.

8 /s/ MATTHEW E. AARON
9 MATTHEW E. AARON, ESQ.
10 Nevada Bar No. 4900
11 2300 West Sahara Avenue, Suite 650
12 Las Vegas, Nevada 89102
13 Attorneys for Debtor
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CERTIFICATE OF SERVICE

1. On November 24, 2009, I served the following document(s)

OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY

2. I served the above-named document(s) by the following means to the persons as listed below:

- ☒ a. ECF System (You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary.)

Trustee Kathleen Leavitt: courtsecf3@las13.com

- ☒ b. United States mail, postage fully prepaid, addressed as follows:
(List persons and addresses. Attach additional paper if necessary.)

Gregory Wilde, Esq.
WILDE & ASSOCIATES
208 S. Jones Blvd
Las Vegas, NV 89107

Mark Bosco, Esq
TIFFANY & BOSCO, P.A.
2525 East Camelback Rd., Suite 300
Phoenix, AZ 85016

Lawrence Marcus
5365 S. Eastern Avenue
Las Vegas, NV 89119

- ☐ c. Personal Service (List persons and addresses. Attach additional paper if necessary)
I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the documents(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the documents(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

- ☐ d. By direct email (as opposed to through the ECF System)
(List persons and email addresses. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- ☐ e. By fax transmission (List persons and fax numbers. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by fax transmission

1 or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No
2 error was reported by the fax machine that I used. A copy of the record of the fax transmission
is attached.

3 o f. By messenger (List persons and addresses. Attach additional paper if
4 necessary) I served the document(s) by placing them in an envelope or package addressed to
the persons at the addresses listed below and providing them to a messenger for service. (A
5 declaration by the messenger must be attached to this Certificate of Service,).

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Signed on: November 24, 2009.

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An employee of Aaron & Paternoster, Ltd.